SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. [redacted] 105

DUQUESNE CLUB,

Petitioner,

vs.

HENRY D. BELL, AS FORMER ACTING COLLECTOR OF INTERNAL REVENUE.

No. [redacted] 106

DUQUESNE CLUB,

Petitioner,

vs.

WILLIAM D. DRISCOLL, AS COLLECTOR OF INTERNAL REVENUE.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

GEORGE B. FURMAN,
PAUL ARMITAGE,
EDWARD HOLLOWAY,
Counsel for Petitioner.

INDEX.

Subject Index.

Table of Cases Cited.

Statutes Cited.

Treasury Regulations.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

Nos. 1269-1270

DUQUESNE CLUB,

Petitioner,

vs.

HENRY D. BELL, AS FORMER ACTING COLLECTOR OF INTERNAL REVENUE,

Appellant-Respondent.

DUQUESNE CLUB,

Petitioner,

vs.

WILLIAM D. DRISCOLL, AS COLLECTOR OF INTERNAL REVENUE,

Appellant-Respondent.

PETITION OF DUQUESNE CLUB FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner, Duquesne Club, a Pennsylvania non-profit corporation, by its counsel respectfully prays that

Writs of Certiorari issue to the United States Circuit Court of Appeals for the Third Circuit to review its judgments entered April 13, 1942 which reversed final judgments in favor of the petitioner of the United States District Court for the Western District of Pennsylvania.

Opinions of the Courts Below.

The opinion of the United States Circuit Court of Appeals for the Third Circuit was filed April 13, 1942 (R. 326). The opinion of the United States District Court for the Western District of Pennsylvania is found at 42 F. Sup. 123 (R. 301).

Jurisdiction.

The judgments of the United States Circuit Court of Appeals for the Third Circuit were entered April 13th, 1942 (R. 331-2). The jjurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (U. S. Code, Title 28, Sec. 347).

The Question Presented.

The question presented is not one of fact. The Trial Court found that, "the primary and predominant purpose of the Duquesne Club is a business club and any social features are incidental to this predominant purpose and are not material to its operation or existence." (R. 299). It found that "the business and professional men have come to look upon the club as a place in which to meet competitors and their business associates: and it is largely used for that purpose during the luncheon period." (R. 294).

The Circuit Court of Appeals specifically adopted these Findings of Fact (R. 326) but held that any "organization, whether incorporated or not, which provides an opportunity for its members to meet each other at meal times and partake together of food and drink with conversation

on whatever subject pleases them is a social organization" (R. 330), and taxable under Section 501 of the Revenue Act of 1926, as amended by Section 413, Rev. Act. 1928.

That court placed upon the term "social" in that statute a new and artificial meaning, contrary to its usual signification, saying that it was a "term of art, even though an elusive one." (R. 327).

The decision of the Circuit Court of Appeals is in conflict in this respect as a matter of law, with the decisions of the Circuit Courts of Appeal of the United States, for the First, Second and Third Circuits, including its own decision, as well as those of the District Courts and Court of Claims.

See:

Squantum Ass'n v. *Page,* 77 F. (2d) 918 (C. C. A. 1st Circuit);

Tidwell v. *Anderson,* 72 F. (2d) 684 (C. C. A. 2d);

Union Club of Pittsburgh v. *Heiner,* 99 F. (2) 259 (C. C. A. 3rd);

Krug v. *Rasquin,* 21 Fed. Supp. 866—Dist. Eastern District N. Y.;

Bankers Club of America, Inc., 37 F. (2d) 982, Ct. Cl.

Summary and Short Statement of the Matter Involved.

These two suits were brought against the respective Collectors of Internal Revenue for the refund of tax on club dues imposed under Sec. 501 of the Revenue Act of 1926, as amended by Sec. 413 of the Revenue Act of 1928, (now Sec. 1710 Int. Rev. Code). They were tried together by stipulation.

The period involved is from September 1, 1935, to July 1, 1938, and the respective amounts are the sums of $5,340.65 and $58,725.89. Claims for refund were duly filed and rejected and suit was brought in the District Court for the Western District of Pennsylvania.

The Trial Court found that the Petitioner was not a social club within the Act. It found in part:

> "The membership of the Club for many years has been composed of leaders in industry, finance and business of the City of Pittsburgh and surrounding territory. More than three-quarters of the members are executives of corporations located in and around Pittsburgh, representing some of the largest industries in the United States. It is the habit of long standing for men to meet at the Club at luncheon time to make contacts, exchange ideas, and have private conferences, directors' meeting, and other gatherings for the promotion of their business interests. The Club offers a place at which members can come for luncheon and a place where, if they desire, they can hold their meetings. The business and professional men have come to look upon the Club as a place in which to meet competitors and their business associates; and it is largely used for that purpose during the luncheon period. This habit and use of the Club has drawn together and maintains its membership. The building is equipped with the usual modern hotel conveniences for the members and guests. It also supplies rooms for overnight guests, when desired. The Club does not sponsor any social, sporting, or athletic activities (R. p. 293 a and 294 a).
>
> * * * The large number of private dining rooms maintained by the Club are provided for members engaged in, and representing large business and industries in and around Pittsburgh where they could discuss their business privately at lunch * * * (R. 294 a).
>
> * * * The bedrooms are maintained to further the business interests and convenience of the members and provide accommodations for out-of-town associates of business organizations to which the members belong (R. 295a).
>
> The Club does not sponsor or furnish any form of entertainment. There is no Entertainment Committee

or special entertainment provided by the by-laws of the Club (R. 295 a). * * * There is no dancing, no receptions, card parties, bridge parties, or anything of that kind. * * * The Club has no facilities for golf, handball, tennis, or any other sports, and has no reciprocal arrangements with any other Club. Most of the time after lunch there is seldom anyone to be seen around the Club, except the attendants. The Club is deserted on Sundays and holidays" (R. 296).

On these Findings and on the other detailed Findings which fully supported them, the *Trial Court* found:

(1) The primary and predominating purpose of the Duquesne Club is a business club, and any social features are incidental to this predominate purpose, and are not material to its operation or existence (R. 299).

(2) The Duquesne Club is not a social, athletic, or sporting club or organization within the meaning of Section 413 of the Revenue Act of 1928, c. 852, 45 Statutes 791 (R. 299).

and rendered judgment accordingly.

It therefore directed Judgment in favor of Plaintiffs for the refunds claimed.

On appeal by the defendants to the Circuit Court of Appeals for the Third Circuit, that Court accepted the Findings of Fact of the Trial Court as correct, but held upon these facts as matter of law that "the term 'social' when used in the statute imposing the tax necessarily becomes a term of art even though an elusive one" (R. 327); and that any organization or club which provides an opportunity for its members to meet each other at meal times and partake together of food and drink, no matter for what purpose, business or pleasure or what the subject of the conversation, is a social club within the Act. In short, that a business luncheon club maintained by business men

for business purposes is a social organization and taxable as such.

The Circuit Court reversed on the law the Judgments of the District Court on its construction of the Taxing Act.

Reasons Relied Upon for the Granting of a Writ of Certiorari.

The discretionary power of this Court is invoked upon the following grounds:

1. Because a direct conflict exists between the decisions of the Circuit Court of Appeals for the Third Circuit, in this case, and decisions of the First Circuit, Second Circuit, and Third Circuit (its own decision).

2. Because a direct conflict exists between this decision of the Third Circuit Court and the decision of this Circuit Court unreversed, which is in harmony with those of other circuits.

3. Because the court below has rendered a decision in conflict with the decisions of the following Federal District and Circuit Courts of Appeal which hold that the predominant purpose and not the subordinate or incidental features, or the serving of food, determine its character and taxability under the Act. On comparable facts, business luncheon clubs were held to be not taxable in the following cases: *Union Club of Pittsburgh* v. *Heiner*, 99 F. (2d) 259, decided by the Circuit Court of Appeals for the Third Circuit; *Tidwell* v. *Anderson*, 72 F. (2d) 684, decided by the Circuit Court of Appeals for the Second Circuit; *Squantum Association* v. *Page*, 77 F. (2d) 918, decided by the Circuit Court of Appeals for the First Circuit; *Engineers' Club of Philadelphia* v. *U. S.*, U. S. District Court, Eastern District of Pennsylvania, 19 A. F. T. R. 1358; *Krug* v. *Rasquin*, 21 Fed. Supp. 866, U. S. District Court Eastern District of N. Y.

4. Because this case involves an important question of Federal Tax Law which affects and will continue to affect numerous taxpayers in the United States, to-wit, a construction of the provisions of Section 501 of the Revenue Act of 1926, as amended by Section 413 of the Revenue Act of 1928, and which has not been but should be settled by this Court.

5. Because there is a direct conflict between the decisions in the Third Circuit and the decisions in the other Circuits above-mentioned in the construction to be placed upon a Federal Tax Law (Section 501, Rev. Act of 1926) i. e., whether the word "social" as found therein shall be given the ordinary and common significance, or shall it be given an "elusive" or "artificial" meaning, contrary to the Regulations of the Treasury Department (See Appendix A), and the uniform decisions of all the other Circuits and Courts of the United States where the question has been presented, with the result that the law has been rendered indefinite, vague, confused and conflicting.

6. Because the decision of the Circuit Court of Appeals, in this case, placing upon the word "social" as found in the Federal Act in question, artificial and "elusive" meaning is in conflict with the well-settled decisions of this Court, that when the words used are plain and unambiguous they are to be given their ordinary signification, "and it is neither the duty nor the privilege of the courts to enter speculative fields in search of a different meaning." *Caminetti* v. *United States*, 242 U. S. 470, 490.

Statutes Involved.

The Statutes and Regulations involved are set forth in full in Appendix A.

WHEREFORE, your petitioner respectfully prays that Writs of Certiorari issue out of and under the seal of this Court,

directed to the United States Circuit Court of Appeals for the Third Circuit, commanding the court to certify and send to this Court on a day to be designated, a full transcript of the Record and all proceedings of the Circuit Court of Appeals had in this case, to the end that this case may be reviewed and determined by this Court, that the judgment of the Circuit Court of Appeals be reversed and that the judgments of the District Court be affirmed, and that your petitioner may be granted such other and further relief as may seem proper.

DUQUESNE CLUB,
By GEORGE B. FURMAN,
Attorney for the Petitioner,
1316 L Street, N. W.,
Washington, D. C.

PAUL ARMITAGE,
EDWARD HOLLOWAY,
233 Broadway, New York, N. Y.,
Of Counsel.

Dated: Washington, May 29, 1942.